

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JASON KUTCHINSKI, as parent and next
Friend to H.K., a minor,

Plaintiffs,

v

FREELAND COMMUNITY SCHOOL
DISTRICT, MATTHEW A. CAIRY, in his
official & individual capacity & TRACI L.
SMITH, in her official & individual capacity)

Defendants.

)
)Case No.: 19-13810
)

) HONORABLE
) SEAN F. COX
)

) MAGISTRATE JUDGE
) PATRICIA T. MORRIS
)

) Case No.: 22-cv-10045
)

JASON KUTCHINSKI, as parent and next
Friend to H.K., a minor,

Plaintiffs,

v.

MATTHEW A. CAIRY,

Defendant.

) HONORABLE
) SEAN F. COX
)

) MAGISTRATE JUDGE
) PATRICIA T. MORRIS
)

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DEFENDANTS' MOTION TO SEAL AND REFILE DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

NOW COME Defendants, FREELAND COMMUNITY SCHOOL DISTRICT, TRACI L. SMITH and MATTHEW A. CAIRY, by and through their attorney, GREGORY W. MAIR and JACOB G. LYDAY, and for their Motion To Seal Exhibits To Defendants' Motion For Summary Judgment, state as follows:

1. That Defendants filed their Motion for Summary Judgment with this Honorable Court on April 12, 2022, which has been designated as ECF #37.
2. That the Motion for Summary Judgment and accompanying Brief in Support contain attachments which include deposition transcripts of witnesses to the instant matter.
3. That Fed. R. Civ. P. 5.2(a) requires the redaction of the names of individuals known to be minors.
4. That it has come to the attention of the undersigned counsel that the Deposition Transcripts, although largely redacted, contain inadvertent references to names of minor children involved in the instant matter.
5. That the undersigned counsel realizes the gravity of these omissions to the redacted transcripts and seeks an Order from this Honorable Court to seal the filing identified by ECF #37 in order to protect the privacy of the persons whose names appear in said transcripts.
6. That additionally Defendants would request leave of this Honorable Court to re-file

their Motion and Brief for Summary Judgment with Exhibits that comply with the redaction requirements of Fed. R. Civ. P. 5.2(a) in their entirety.

7. That the parties have met and conferred with regard to the requested relief and Plaintiffs have indicated their concurrence in said relief.
8. That good cause therefore exists to seal the documents filed as ECF #37 and to grant Defendants leave to refile the documents in compliance with Fed. R. Civ. P. 5.2(a).

WHEREFORE, for the reasons stated, Defendants respectfully request that this Honorable Court GRANT Defendants' Motion and:

A. Order that the Clerk of the Court shall seal ECF Docket No. 37 from the public record.

B. Enter an Order granting Defendants leave to re-file their Motion for Summary Judgment in compliance with Fed. R. Civ. P. 5.2(a).

Respectfully submitted,

Date: April 22, 2022

s/JACOB G. LYDAY (P84753)
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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO SEAL AND
REFILE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

QUESTIONS PRESENTED

I. IS IT PROPER FOR THE COURT TO SEAL FROM THE PUBLIC RECORD A DOCUMENT THAT HAS BEEN FILED CONTAINING NAMES OF INDIVIDUALS KNOWN TO BE MINORS?

Defendants would Answer, “Yes.”

Plaintiff would Answer, “Yes.”

STATEMENT OF MOST APPROPRIATE/CONTROLLING AUTHORITY

Fed. R. Civ. P. 5.2(a) states as follows:

a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

(1) the last four digits of the social-security number and taxpayer-identification number;

(2) the year of the individual's birth;

(3) the minor's initials; and

(4) the last four digits of the financial-account number.

ARGUMENT

Defendants acknowledge the errors made in the redaction of the deposition transcripts filed in support of their Motion for Summary Judgment. Although many instances of minor student's names have been redacted from the transcripts, several instances across the Transcripts were inadvertently omitted during the redaction process. Protection of these individuals and their privacy rights are of a great concern to Defendants and the undersigned counsel does not come before this Court without an understanding of the gravity and importance of these interests.

This Honorable Court is empowered by the Federal Rules of Civil Procedure to allow for the filing of documents under seal and to seal documents which have already been filed. Pursuant to Fed. R. Civ. P. 5.2(a), the instant matter is one such situation that is directly contemplated by the Rule. There is therefore good cause for this Honorable Court to seal the documents identified as Docket No. 37 to protect the privacy rights of the individuals who are named in deposition transcripts. Furthermore, there is also good cause to allow Defendants to refile their Motion for Summary Judgment with the corrected exhibits, which would bring the remediation of this issue full circle and allow the case to proceed.

Respectfully submitted,

Date: April 22, 2022

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send confirmation of such filing to the following:

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Respectfully submitted,

Date: April 22, 2022

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